

T7AB

MCCLESKEY, HARRIGER, BRAZILL & GRAF

ATTORNEYS

A REGISTERED LIMITED LIABILITY PARTNERSHIP
OF INDIVIDUALS AND PROFESSIONAL CORPORATIONS

ALLEN L. ADKINS*
Wm F. (PETE) BAKER
CLARENCE P. BRAZILL, JR. (1919-1990)
DENNIS R. BURROWS, P.C.**
DUSTIN R. BURROWS
FERNANDO M. BUSTOS
DONNA L. COURVILLE
BENJAMIN H. DAVIDSON, II
DON GRAF
ANN PHILLIPS HAAG
JODY D. JENKINS
PAULA M. JOHNSON

LUBBOCK, TEXAS
PLAINSCAPITAL BANK BUILDING
5010 UNIVERSITY - ZIP 79413
P.O. BOX 6170 - ZIP 79493
(806) 796-7300-- Telephone
(806) 796-7365-- Facsimile

JERRY M. KOLANDER, JR., P.C.
WILLIAM P. LANE
GEORGE W. MCCLESKEY (1915-1997)
JEANNIE N. MARROW
ANGELA B. POULSON
SAMUEL E. SPROWLES*
TOMMY J. SWANN
J. MARK WAGNON
MIKE WORLEY
DAN G. YOUNG

HAROLD O. HARRIGER, Of Counsel
R. REX AYCOCK, Of Counsel

Writer's Direct Dial Number:
(806) 780-3976

May 18, 2005

*Also licensed in the State of New Mexico
**Also licensed in the State of Colorado

E-Mail Address

fbustos@mhbg.com

Trademark Trial & Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1451
Arlington, VA 22313-1451

Via Certified Mail# 7106 4575 1293 0000 8673

**Re: In the Matter of Application No. 76/546,741; For the Mark RED RIVER FARMS
SCOOPS ICE CREAM and Design**

**In the Matter of Application No. 76/546,740; For the Mark RED RIVER FARMS and
RR Design**

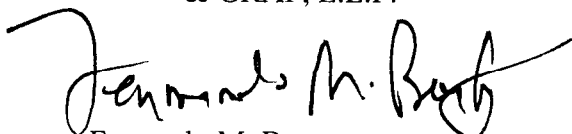
Enclosed is Applicant's Answer to Notice of Opposition regarding Red River Farms Scoops Ice Cream, Application No. 76/546,741. Also enclosed is Applicant's First Amended Answer to Notice of Opposition regarding Red River Farms and RR Design, Application No. 76/546,740.

By copy of this letter, I am providing opposing counsel with a copy of these Answers.

If you have any questions, or if you need anything further, please do not hesitate to contact me.

Sincerely,

MCCLESKEY, HARRIGER, BRAZILL
& GRAF, L.L.P.


Fernando M. Bustos

FMB/jnm
Enclosure

cc: Michael J. MacDermott - Via Certified Mail



05-24-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #64

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF APPLICATION NO. 76/546,741
For the Mark RED RIVER FARMS SCOOPS ICE CREAM and Design
Published in the Official Gazette of September 28, 2004 (the term for opposition having been
extended to March 27, 2005)

The Neiman Marcus Group, Inc., Opposer	§	
	§	
vs.	§	Opposition No. 91164799
	§	
United Supermarkets, Ltd., Applicant	§	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, UNITED SUPERMARKETS, LTD., ("United") for its answer to the Notice of Opposition filed by THE NEIMAN MARCUS GROUP, INC. against application for registration of United Supermarket, Ltd.'s trademark RED RIVER FARMS SCOOPS ICE CREAM and Design, Serial No. 76/546,741, filed September 2, 2003 in Class 30 and published in the Official Gazette of September 28, 2004, pleads and avers as follows:

1. Answering paragraph 1 of the Notice of Opposition, United has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations.
2. Answering paragraph 2 of the Notice of Opposition, United has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations.
3. Answering paragraph 3 of the Notice of Opposition, United does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly

denies the allegations.

4. Answering paragraph 4 of the Notice of Opposition, United does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

5. Answering paragraph 5 of the Notice of Opposition, United admits that it is seeking to register the mark RED RIVER FARMS SCOOPS ICE CREAM in Design for ice cream. However, United does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the allegations.

6. Answering paragraph 6 of the Notice of Opposition, United denies each and every allegation contained therein.

7. Answering paragraph 7 of the Notice of Opposition, United admits the allegations thereof.

8. Answering paragraph 8 of the Notice of Opposition, United admits the allegations thereof.

9. Answering paragraph 9 of the Notice of Opposition, United denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

10. There is no likelihood of confusion, mistake, or deception because, *inter alia*, United's mark and the pleaded marks of Opposer are not confusingly similar.

11. There is no likelihood of confusion, mistake or deception because, *inter alia*, United's mark is not confusingly similar to the pleaded marks of Opposer. According to Opposer's Notice of Opposition, Opposer's pleaded marks are only sold through "their retail [department] stores, mail

order catalogs, and, more recently, internet web site.” See Opposer’s Notice of Opposition, pg. 1. In contrast, United’s mark is only sold in its grocery stores. Thus, the trade channels of Opposer’s and United’s marks are different and such marks are aimed at completely different sectors of consumers.

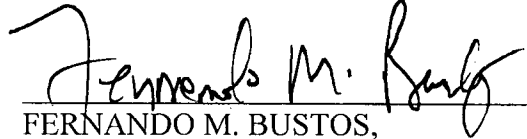
12. There is no likelihood of confusion, mistake, or deception because *inter alia*, United’s mark is not confusingly similar to the pleaded marks of Opposer. Any similarity, if at all, between United’s mark, with design, and the pleaded marks of Opposer, with design, is in the mere use of the terms “Red River,” which upon information and belief, has been used and registered by numerous third parties in Class 30. In contrast to Opposer’s mark, with design, United’s mark, with design, is never used without the additional terms “Farm Scoops Ice Cream” and design. Furthermore, the prominent word in United’s design is “Scoops,” which appears in a large cursive font. Given the distinct differences in Opposer’s mark, with design, and United’s mark, with design, Opposer cannot base any similarity between its pleaded marks and the mark of United on the mere use of the terms “Red River.”

13. Opposer has acquiesced by failure to oppose United’s prior registration for trademark with the Office of the Secretary of State of Texas for United’s Red River Farms Scoops Ice Cream trademark and design, which issued March 3, 2005, Registration No. 800441172. Opposer was aware of this filing, but made no effort to oppose that filing, and instead acquiesced to issuance of an identical state trademark filing by United. Thus, United pleads the affirmative defense of laches and acquiescence in response to the Notice of Opposition.

WHEREFORE, UNITED SUPERMARKETS, LTD., Applicant, prays that the Notice of Opposition be dismissed in its entirety, and that a registration issue to United for its mark.

Date: May 18, 2005

UNITED SUPERMARKETS, LTD.



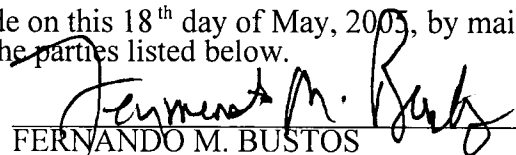
FERNANDO M. BUSTOS,
Texas Bar No. 24001819
McCLESKEY, HARRIGER, BRAZILL
& GRAF, L.L.P.

P.O. Box 6170
Lubbock, Texas 79493-6170
(806) 780-3976
(806) 796-7365 FAX

ATTORNEYS FOR UNITED
SUPERMARKETS, LTD.

CERTIFICATE OF SERVICE

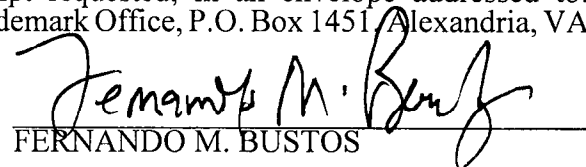
Service of the foregoing document was made on this 18th day of May, 2005, by mailing a copy by certified mail, return receipt requested, to the parties listed below.


FERNANDO M. BUSTOS

Michael J. MacDermott
CHRISTIE, PARKER & HALE, LLP
P.O. Box 7068
Pasadena, CA 91109-7068
ATTORNEYS FOR OPPOSER
Certified Mail # 7106 4575 1293 0000 8680

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, certified, return receipt requested, in an envelope addressed to: Trademark Trial & Appeal Board, U.S. Patent & Trademark Office, P.O. Box 1451 Alexandria, VA 22313-1451 on May 18, 2005.


FERNANDO M. BUSTOS

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF APPLICATION NO. 76/546,740
For the Mark RED RIVER FARMS and “RR” Design
Published in the Official Gazette of October 5, 2004 (the term for opposition having been
extended to April 3, 2005)

The Neiman Marcus Group, Inc., Opposer	§	
	§	
vs.	§	Opposition No. 91164800
	§	
United Supermarkets, Ltd., Applicant	§	

APPLICANT’S FIRST AMENDED ANSWER TO NOTICE OF OPPOSITION

Applicant, UNITED SUPERMARKETS, LTD. (“United”), for its answer to the Notice of Opposition filed by THE NEIMAN MARCUS GROUP, INC., against application for registration of United’s trademark RED RIVER FARMS and “RR” DESIGN, serial number 76/546,740, filed September 2, 2003 and published in the Official Gazette of October 5, 2004, pleads as follows:

1. Answering paragraph 1 of the Notice of Opposition (“Opposition”), United is without knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations.

2. United is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2 of the Opposition and accordingly denies the allegations.

3. United does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 3 of the Opposition and accordingly denies the allegations.

4. United does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 4 of the Opposition and accordingly denies the allegations.

5. United denies that the goods for which it seeks to register the mark RED RIVER FARMS and “RR” Design are closely related to the food and beverage products for which Opposer has used the RED RIVER Marks since a date prior to Applicant’s priority date. To the contrary, United’s goods for which it seeks to register its RED RIVER FARMS and “RR” Design are of different product classifications than those used by Opposer for its RED RIVER marks.

6. Deny.

7. Admit.

8. Admit.

9. Deny.

AFFIRMATIVE DEFENSES

10. There is no likelihood of confusion, mistake, or deception because, *inter alia*, United’s mark and the pleaded marks of Opposer are not confusingly similar.

11. There is no likelihood of confusion, mistake, or deception because, *inter alia*, United’s mark is not confusingly similar to the pleaded marks of Opposer. Specifically, the graphic design associated with United’s mark is substantially different from Opposer’s pleaded marks, in that United’s mark is “RED RIVER FARMS,” while Opposer’s pleaded mark is simply “RED RIVER.” Furthermore, the graphic design accompanying United’s RED RIVER FARMS mark is of a different font type than Opposer’s pleaded marks and United’s “RR” Design is significantly distinct from the design associated with Opposer’s pleaded marks such that there is no likelihood of confusion, mistake, or deception between the different marks of the opposing parties.

12. Opposer has acquiesced by failure to oppose United's prior registration for trademark with the Office of the Secretary of State of Texas for United's Red River Farms trademark and design, which issued March 11, 2005, Registration No. 800441177. Opposer was aware of this filing, but made no effort to oppose that filing, and instead acquiesced to issuance of an identical state trademark filing by United. Thus, United pleads the affirmative defenses of laches and acquiescence in response to the Notice of Opposition.

WHEREFORE, United prays that the Notice of Opposition be dismissed in its entirety, and that a registration issue to United for its mark.

Respectfully submitted,

May 18, 2005
Date

Fernando M. Bustos

FERNANDO M. BUSTOS

Texas Bar No. 24001819

McCLESKEY, HARRIGER, BRAZILL
& GRAF, L.L.P.

P.O. Box 6170

Lubbock, TX 79493

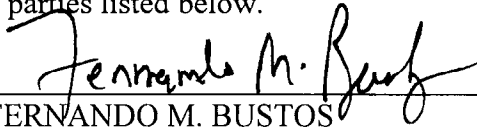
Phone (806) 780-3976

Fax (806) 796-7365

ATTORNEYS FOR UNITED
SUPERMARKETS, LTD.

CERTIFICATE OF SERVICE

Service of the foregoing document was made on this 18th day of May, 2005, by mailing a copy by certified mail, return receipt requested, to the parties listed below.


FERNANDO M. BUSTOS

Michael J. MacDermott
CHRISTIE, PARKER & HALE, LLP
P.O. Box 7068
Pasadena, CA 91109-7068
ATTORNEYS FOR OPPOSER
Certified Mail # 7106 4575 1293 0000 8680

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, certified, return receipt requested, in an envelope addressed to: Trademark Trial & Appeal Board, U.S. Patent & Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on May 18, 2005.


FERNANDO M. BUSTOS